

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SATHISH NINAN

THURSDAY, THE 29TH DAY OF FEBRUARY 2024 / 10TH PHALGUNA, 1945

RFA NO. 527 OF 2008 (E)

AGAINST THE DECREE AND JUDGMENT DATED 30.01.2008 IN OS NO.98 OF
2007 OF SUB COURT, PERUMBAVOOR

APPELLANT/DEFENDANT:

PATHROSE, AGED 53,
S/O.DEVASSY, MANIYANCHERY HOUSE, AIMURY KARA,
KOOVAPPADY VILLAGE, KUNNATHUNADU TALUK

BY ADV SRI.MILLU DANDAPANI

RESPONDENTS/PLAINTIFFS:

1 CHACKO, AGED 53 YEARS,
S/O.ITHAPEERI, PUTHIYAMADOM HOUSE, KINGINIMATTOM KARA,
AIKKARANADU SOUTH VILLAGE, KUNNATHUNADU TALUK.

2 ELDHOSE, AGED 36,
S/O.JOSEPH, PANDACHERI HOUSE, KINGINIMATTOM KARA,
AIKKARANADU SOUTH VILLAGE, KUNNATHUNADU TALUK

BY ADV SRI.P.THOMAS GEEVERGHESE

THIS REGULAR FIRST APPEAL HAVING COME UP FOR HEARING ON
29.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

SATHISH NINAN, J.

= = = = =

R.F.A. No.527 of 2008

= = = = =

Dated this the 29th day of February, 2024

J U D G M E N T

The decree for money is under challenge by the defendant in the suit.

2. The defendant is the owner of a metal crusher unit. As per Ext.A1 agreement dated 05.02.2004, the plaintiff took the Unit on lease from the defendant. The term of lease was five years. An amount of ₹ 1,50,000/- was paid by the plaintiff to the defendant as security deposit. As per the agreement the defendant was to secure the necessary licenses for the Unit. Since the Unit did not have the required licenses, the plaintiff could not operate. The plaintiff surrendered the Unit to the defendant on 12.12.2004. The plaintiff claims return of the security amount of ₹ 1,50,000/- and also an amount of ₹ 1,30,000/- alleged to have been spent by him for repairing the machinery to commence functioning of

the Unit. The defendant filed counter claim alleging that the plaintiff has caused damages to the machinery and also for damages for premature termination as provided for in the agreement.

3. The trial court held that the contract was frustrated and accordingly granted a decree for return of the security deposit. The claim for money for the alleged repair of the machinery was declined. The counter claim filed by the defendant was dismissed.

4. Heard learned counsel on either side.

5. The points that arise for consideration are :-

(i) Was the trial court right in having held that the contract is frustrated and that the plaintiff is entitled for return of the security deposit?

(ii) Was the trial court right in having declined the counter claim for the alleged damages to the machinery and damages stipulated in the agreement for premature termination?

6. Ext.A1 agreement was entered on 05.02.2004. A neighbour filed a suit as OS 88/2004 to restrain the functioning of the Unit without proper licenses and permissions. Ext.A2 is the plaint. In the suit, on 05.03.2004 the court passed an interim order of prohibitory injunction against the functioning of the Unit. It is not in dispute that, as per the agreement between the parties the defendant was to secure the necessary licenses and permissions for the Unit. The defendant approached this Court in W.P.(c). No.7663/2004. This Court passed Ext.B6 interim order dated 08.07.2004 directing issuance of provisional license. Ext.B1 is the provisional license dated 14.07.2004 so issued. The license was valid till 31.03.2005. Subsequently the writ petition was disposed of as per Ext.B7 judgment dated 10.12.2004. This Court permitted the functioning of the Unit till 15.01.2005. The defendant alleges that the plaintiff was running the

Unit during the period from July 2004 to December 2004.

7. While it is true that Ext.B1 provisional license was issued to the defendant on 14.07.2004 with validity up to 31.03.2005, as per Ext.B7 judgment this Court while disposing of the writ petition had permitted functioning only up to 15.01.2005. Though Ext.B1 provisional license was issued, it is not in dispute that the defendant did not produce the same in OS 434/2004 and seek for vacating/modification of the interim order of injunction so as to enable the plaintiff to function the Unit. Therefore, on the face of Ext.A3 order of injunction which continued to be in force, the plaintiff could not have operated the Unit. There is no evidence that, in spite of the order of injunction the plaintiff was running the Unit. Though the defendant produced Exts.B8 and B9 electricity bills claiming that it relates to the Unit in question and to show that the unit was functioning, as noticed by the

trial court, there is nothing in Exts.B8 and B9 to indicate that it relates to the Unit in question. No evidence is sought to be produced to prove that Exts.B8 and B9 relates to the Unit. Therefore, there is nothing on evidence to find that the plaintiff had operated the Unit at any point of time. As noticed, in the light of Ext.A3 injunction order, the plaintiff could not have operated the Unit.

8. On the facts as above, it can only be concluded that the trial court was right in having held that the contract is frustrated. Consequently the plaintiff is entitled to get return of the security deposit. The trial court was right in having granted a decree for the same.

9. Though the defendant alleges that damages were caused to the machinery due to the functioning of the Unit during the period from July 2004 to December 2004, as cited supra, there is no evidence to find that the

plaintiff was able to operate the Unit during the said period. Therefore, the claim for the alleged damages is apparently unsustainable. The trial court was right in having declined the same. As regards the claim for damages for premature termination, the agreement having been frustrated the defendant is not entitled to rely on it to claim damages. The dismissal of such claim by the trial court is only to be affirmed and I do so.

There is no merit in the appeal.

The appeal fails and is dismissed.

Sd/-
SATHISH NINAN
JUDGE

kns/-

//True Copy//

P.S. to Judge